



DEPARTMENT OF INFORMATION RESOURCES
Appendix F-2 to DIR Contract No. DIR-TSO-2735
Cloud Service – Service Agreement

Service Agreement

[Managed Private Cloud; Virtual Private Cloud; Disaster Recovery as a Service (DRaaS) Continuity, BI/Analytics –Autonomy IDOL PaaS] Cloud Services

DIR Contract No. DIR-TSO-2735 and this Service Agreement for *[Managed Private Cloud, Virtual Private Cloud, DRaaS Continuity Cloud, BI/Analytics –Autonomy IDOL PaaS]* Services (the “Services Agreement”) governs performance of Services by HP Enterprise Services, LLC (“HP”) for the Customer entity named below (“Customer”). For convenience, HP and Customer are referred to as the “Parties” and entities controlled by, controlling and under common control with a Party are referred to as their “Affiliates.” In the event of a conflict, the DIR Contract No. DIR-TSO-2735 controls.

- 1. Terms and Interpretation.** Capitalized terms have the meanings given in the relevant Glossary or where they first appear. This Services Agreement consists of: (i) the main body of the Services Agreement; (ii) the Service Descriptions, Policies and other supporting materials (“Supporting Materials”) incorporated by attachment; and (iii) Customer’s written orders for particular Services or other similar documents (“Orders”), each as accepted by HP. (For convenience, service[s] described by Service Descriptions are referred to as “Service[s].”) Specific terms of a Service Description or Policy concerning particular Services supersede any general references in the main body of the Services Agreement.
- 2. Commencement of Services.** HP will provide Services to Customer from the start date through the end date specified in the relevant Order (unless extended or terminated). Services are for Customer’s exclusive use in its business and not for resale.
- 3. Performance Standards.** HP will perform the Services using reasonable care and skill and meet or exceed applicable Service Levels. HP makes no other warranties concerning the Services, and disclaims all other warranties or conditions, including implied warranties, to the extent allowed by applicable law. HP does not assure uninterrupted or error-free operation of any computer, network, or other system or Service. If HP fails to meet Service Levels, Customer may receive Service Credits to the extent provided by the relevant Service Descriptions, unless the failure is excused by Sections 6 (Place of Operations), 8 (Excused Performance) or Force Majeure. Service Credits are Customer’s sole remedy for unexcused failures to meet Service Levels (“Faults”) except in case of material breach. Service Levels do not apply following Force Majeure Events until normal Services are restored.
- 4. Changes in Policies and Operations.** HP may make changes in its operations and Policies, so long as no such change (i) breaches any of HP’s express obligations, (ii) increases HP’s Charges for affected Services, or (iii) materially reduces the quality of affected Services. Changes that may significantly affect customers will be effective after reasonable notice to affected customers. HP may make urgent changes at any time without notice but will inform customers of significant changes within a reasonable time. If any such change materially and adversely affects Customer’s legitimate use of the Services,



Customer may terminate the affected Service under the termination provisions of this DIR Contract No. DIR-TSO-2735.

5. **Changes in Service.** Certain changes may be requested through the Cloud Portal or HP Service Desk (as described by the relevant Service Description, user guide or other documentation). Other changes or amendments to the Services Agreement must be in writing and approved by the Parties' authorized representatives. Change proposals or change orders, once signed by the Parties' authorized representatives, amend and supplement the Services Agreement effective as of an agreed date. HP may decline to quote requested changes. HP may also offer enhancements as options at additional cost.
6. **Place of Operations.**

For Managed Private Cloud: HP will provide Services from the specified data center in the SOW(s).

For Virtual Private Cloud and DRaaS Continuity Cloud: HP will provide Services from U.S. based service center(s) designated on Customer's Order(s) or otherwise in writing, but may relocate to another U.S. based service center(s) from time to time, after reasonable notice to Customer. If Customer has concerns about relocation, Customer may terminate affected Services for its convenience without paying any Termination Charge (subject to applicable minimums). Any applicable minimums or upfront costs shall be detailed in a mutually agreed upon Statement of Work.
7. **Points of Contact.** HP's Account Executive and the support functions designated by HP shall be Customer's points of contact concerning the Services. Customer will designate two (2) representatives authorized to act for Customer and to serve as HP's principal points of contact. Each Party may replace its representatives and will so inform the other Party. Customer will designate technical representatives to obtain support and manage Customer's receipt of Services, if relevant SOW(s) so provides. (For convenience, Customer's representatives and the HP Account Executive are sometimes referred to as "Authorized Representatives").
8. **Excused Performance.** Each Party will be excused from delays or failures to perform to the extent caused by acts or omissions of the other Party, its employees, agents, users, Affiliates or contractors.
9. **Reserved.**
10. **Compliance with Laws.** Each Party will comply with laws, regulations, and legal requirements that apply to the exercise of its rights and performance of its obligations and, for Customer, receipt and use of the Services. In particular, Customer shall comply with applicable privacy and export control laws and regulations. Imports, exports and other transfers of data or software stored, used or processed using the Services or related infrastructure are Customer's sole responsibility and Customer will obtain any authorizations that may be required. HP will not be responsible for Customer's use of the Services, including (i) acts and omissions of Customer and all users, and (ii) Customer's compliance and users' compliance with applicable laws, regulations, legal requirements and standards.
11. **Security.** HP provides only the security features described by the Service Description(s), Policies and Security Supplement (if any) ("Security"). Customer has sole responsibility for the security of its systems, data, confidential information and Personally Identifiable Information (PII). Customer has verified that the Security satisfies Customer's requirements; complies with relevant laws, regulations, treaties and standards concerning Customer's data, business and use of the Services; and otherwise meets Customer's requirements.
12. **Known Risks.** Customer acknowledges that: (i) transmissions on the Internet and Internet-facing applications or other networks carry certain risks that could result in losses of data and property; (ii) those risks are not HP responsibilities; (iii) HP provides only the monitoring services (if any) described by relevant Service Description(s) and Policies; (iv) HP has no responsibility for the security of software installed by Customer; (v) where Customer chooses to deviate from HP's standard security practice for the Services, it does so at its own risk; (vi) Services are not designed to comply with any

particular law or regulations unless otherwise stated in Service Description(s); (vii) no security measures provide absolute protection; and (viii) Customer maintains all data on HP infrastructure at its own risk. However, none of these acknowledgments alters or diminishes HP's express obligations (including those in the Service Description[s] and in Sections 3 [Performance Standards], 10 [Compliance with Laws] and 11 [Security].) Customer further acknowledges that HP assumes no responsibility for viruses or other malware introduced by Customer or any End User, or for restoration of lost or corrupted data or applications except for HP's specific restoration obligations, if any, explicitly set forth in Service Description(s).

13. **Use Limits.** Services are not intended for and Customer will not use the Services to store, transmit or process data for any applications or uses that: (i) require or relate to information or technology subject to military or dual use export controls; (ii) might greatly endanger individuals, property or the environment, such as operation of: (A) ships, aircraft, railroads and motor vehicles; (B) chemical or nuclear facilities; (C) critical public infrastructure (such as power stations); and (D) medical devices used in patient care; or (iii) involve implementation or provision of regulated network and/or telecommunications services. Applications or uses that require or relate to compliance with specific regulatory standards that apply to Customer's data, business and use of Services (such as those for health care and related services, financial services, payment card transactions) are permitted to the extent contemplated by the SOW(s). Customer may use the Services to store information subject to import and export controls under the condition that the Parties agree to comply with all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control.
14. **Data Controller.** Customer shall be Data Controller of its data at all times. HP does not monitor what data Customer enters into, stores or processes. HP may have access to business contact information and the other data that Customer furnishes (such as contact information for Customer's representatives) from countries other than the country from which Customer entered that data. HP may make reasonable use of Customer's business contact information solely in connection with performance and delivery of Services.
15. **European Personal Data.** If Customer reasonably anticipates that its use of the Services will involve storage or processing of PII from the European Economic Area ("EEA"), Customer will so inform HP, and provide whatever information HP reasonably requests related to that storage or processing. Upon Customer's request, HP will enter into (or cause its Affiliates to enter into) EU Model Contract(s) with appendices (including technical and organizational security measures) in the form from time to time used by HP and its Affiliates (and available to Customer upon request). Customer hereby appoints HP as its agent to execute EU Model Contracts on Customer's behalf.
16. **Technology Audits.** Nothing in this Section grants Customer or any entity the right to inspect or audit information solely related to any customer of HP that is not purchasing through this Contract. Customer and its auditors may have electronic or logical access to Customer Data and Customer's dedicated environments in order to audit Customer's systems, data, controls, and other matter pertinent to Customer's business and statutory requirements and HP's compliance with the Contract. Customer's audit are at Customer's sole expense.
17. **Audit Procedures.** Customer's auditors may not be competitors of the Hewlett-Packard Company or its Affiliates. Upon reasonable advance written notice of not less than 10 business days, HP will allow DIR's auditors or investigators to conduct a walk-through ("Visit") of HP site location(s) used to provide the services to Customers if (a) HP has failed to provide a SSAE 16 audit or provides a SSAE 16 audit but fails to provide information on what commercially reasonable steps HP is taking to remediate any issues identified in such audit, or if (b) after HP's compliance with the foregoing, Customer requires the audit, and if information and documentation provided by HP (including, e.g.,



professional, industry standard security audits) are not reasonably sufficient assurances under the circumstances, or (c) DIR has reason to believe an emergency or fraudulent situation exists concerning HP's performance under the Contract, provided that: (i) such Visit is reasonably designed to provide DIR or its auditors or investigators with information relating to HP's compliance under the Agreement; (ii) the Visit occurs at a time reasonably specified by HP in accordance with applicable HP policies (including investigation and security policies); (iii) no more than ten DIR representatives who must be certified auditors, IT professionals, or senior management may participate in the Visit, while under the supervision and escort of HP personnel, and the Visit will be conducted in accordance with HP's standard policies, provided that those policies may not in any way impede the purpose of the Visit; (iv) the Visit is performed during HP's normal business hours; (v) each auditor or investigator signs a non-disclosure agreement as provided in Attachment 1 to Appendix F-2 and; (vi) the Visit is conducted in a way that avoids any unreasonable or unnecessary disruption to HP's operations; and (vii) all Services or features of HP not being provided to DIR or its Customers, including "pre-release," "alpha," or "beta" services or features designated as such by HP will not be part of the Visit; provided that this limitation may not in any way impede the purpose of the Visit. Nothing in this agreement will be construed to limit the State Auditor's Office clause in Appendix A, Section 7C(1) of the Contract.

18. **HP Audits.** If specified in the Service Description, HP will provide to Customer its annual service auditor's report on controls placed in operation and tests of operating effectiveness for the HP data center(s) used to provide Services, in compliance with ISAE 3402 and SSAE 16 (or successor standards).
19. **Customer Data.** Customer is responsible for managing its data and any access to its data. HP will have limited access to Customer Data only where necessary to support the IT systems and other resources used by HP to provide the Services. If HP should have access to Customer Data, HP may use or disclose Customer Data only (i) as authorized, directed, or permitted by Customer; (ii) in connection with performance of Services; (iii) in order to comply with applicable laws, regulations, subpoenas, discovery, or similar orders or requests; (iv) to investigate and help to prevent or mitigate security threats, fraud or other illegal, malicious, or inappropriate activity; or (v) with the prior informed consent of affected data subjects. If and when any such disclosure is required by law, HP will (if permitted to do so) make reasonable efforts to inform Customer so that Customer may seek legal protection. Customer may retrieve Customer Data at any time in its usual format.
20. **Data Incidents.** In the event that any PII is disclosed by HP contrary to its obligations under the Services Agreement, or HP discovers or receives notice that unauthorized access, acquisition, disclosure or use of personal data has occurred ("Data Incident"), then, unless prohibited by express directive of law enforcement, HP shall inform Customer immediately after HP becomes aware of the breach and has confirmed that the particular Customer's data may have been affected investigate causes of the Data Incident, and take appropriate corrective action to prevent recurrence (to the extent the causes are within HP's responsibility). If applicable laws require notice to public authorities or individuals, Customer shall give required notices (with HP's cooperation) at Customer's expense, except to the extent that: (i) Customer can demonstrate that the Data Incident occurred because of HP's failure to perform its express obligations under the Services Agreement; and (ii) HP approves arrangements for notice and related remedial measures, if any.
21. – 22. **Reserved.**
23. **Software.** HP shall obtain and maintain sufficient rights to third party software that HP uses to perform the Services. HP grants Customer a nonexclusive, revocable license to use any HP software included in the Services, solely to the extent necessary for Customer and Authorized Users to receive and use the Services. Customer shall obtain and maintain sufficient rights to third party software that Customer uses in connection with its receipt of Services and use of related infrastructure, including applications or systems software furnished or installed by Customer. Customer grants HP a nonexclusive, revocable

license to use any of its proprietary software or other intellectual property from time to time transmitted to, stored, or otherwise used on the cloud infrastructure, to the extent necessary to perform the Services.

24. – 30. **Reserved.**

31. **Disputes.** Dispute Resolution shall be in accordance with the DIR Contract No. DIR-TSO-2735.

32. **Disengagement.** Upon expiration or any termination of the Services Agreement, the Parties shall disengage in accordance with the relevant Service Description(s).

33. – 36. **Reserved.**

37. **Good Faith.** Whenever this Services Agreement requires or contemplates any action, consent, or approval, the Parties shall act reasonably and in good faith. They may not unreasonably withhold or delay any action, consent, or approval.

38. **General.** DIR Contract No. DIR-TSO-2735 and this Services Agreement, including Service Description(s) and Policies listed below, constitute the Parties' entire understanding and supersedes any previous communication or agreements. Modifications will be made only through written amendment signed by both Parties' representatives (excluding Orders and changes entered and accepted electronically, and permitted HP changes to Services or Policies). A person who is not a party to this Services Agreement has no right to enforce any term of this Services Agreement. This Services Agreement may be executed in one or more counterparts. In the event of a conflict, the DIR Contract No. DIR-TSO-2735 controls.

39. **Reserved.**

40. **Term of Services Agreement.** The term of the Services Agreement ("Term") begins on the Effective Date and will end on the date specified by the SOW(s) to expire or cessation of all Services (including disengagement), whichever is later (unless the Services Agreement is terminated). SOW(s) are subject to acceptance by HP and effective when Services are made available to Customer. SOW(s) also remain in effect until the end date specified or cessation of relevant Services (including disengagement), if later (unless terminated). The Services Agreement and individual SOW(s) may be extended or renewed by mutual, written agreement of the Parties' authorized representatives. The maximum term for a Service Agreement is 36 months.

41. **Renewals.** For DRaaS Helion-Continuity only - If Customer does not notify HP in writing that it does not intend to renew the Agreement at least ninety (90) days before it would otherwise expire, it shall be renewed for an additional twelve (12) months at HP's then-current rates but not at any rate higher than the rate of the expiring term.

42. **Service Descriptions and Policies.** The Services Agreement includes and incorporates by this reference the Service Descriptions and Policies listed below, and such other Service Descriptions (with related Policies) as may be agreed in writing from time to time. [Insert Service Description, Security Features (if any), Acceptable Use and Notification Policies.]

Executed by the Parties' undersigned authorized representatives as of the Effective Date.

[HPES]

By: _____
 Name: _____
 Title: _____

[Customer]



By: _____
Name: _____
Title: _____